

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 646 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KAILASHBHAI R VALVI

Appearance:

MR KS JHAVERI for Petitioner

MS PARUL PATEL for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/12/2000

ORAL JUDGEMENT

#. Rule. Ms.Parul Patel appears and waives service of
rule on behalf of the respondent.

#. The petitioner has challenged the award passed by the

Labour Court, Surat dated 22.7.1999 passed in Reference (LCS) No.68/97 by which the reference of the respondent-workman was partly allowed and he was ordered to be reinstated in service within 30 days from the publication of the award and ordered to give benefits of continuity of service without backwages for the intervening period. The Labour Court, however, substituted the penalty imposed by the employer and instead of removal, the respondent-workman was subjected to the penalty of withholding of three increments with future effect.

#. The respondent - workman was serving as Conductor at the relevant time and on the ground that, he had not issued certain tickets to seven passengers of two groups, he was subjected to the departmental inquiry and thereafter he was removed from service by an order dated 10.7.1996.

#. The respondent - workman thereafter raised industrial dispute. The Labour Court found that the departmental inquiry was properly held. However, while exercising the powers under section 11-A of I.D.Act penalty of removal was substituted by withholding of three increments with future effect.

#. Mr.Jhaveri, learned counsel for the petitioner argued that this was a case of second misconduct and his pass record was also not clean. It is submitted that the respondent - workman being a conductor should have been faithful to the S.T.Corporation, instead of that, he tried to take monetary advantage by not issuing the tickets to some of the passengers of the Corporation and such action would amounts to financial loss to the institution. He lastly submitted that, in any case, even the court thinks it fit to reinstate the concerned workman, punishment should be such which might have deterrent effect on the employee.

#. On the other-hand, Ms.Parul Patel argued that the order of reinstatement is not required to be interfered with. She submits that, in any case, if the court is of the opinion that the penalty which is substituted by the Labour Court is not enough, this court may pass appropriate order by imposing further penalty except disturbing the order of reinstatement. She has also argued that, past record of the respondent-workman is unblemish.

#. After hearing both the learned advocates, I am of the opinion that, non-issuance of the tickets by the

Conductor is a serious type of misconduct. The person in service should not behave in such a manner that the Institution in which he is serving is subjected to monetary loss and, therefore, financial irregularity is naturally a serious type of misconduct. However, looking to the fact that, the Labour Court ultimately while exercising powers under section 11-A of I.D.Act, has substituted the penalty of removal by way of reinstating the concerned workman without backwages, I do not think it fit to restore the said penalty again which was passed by the Disciplinary Authority. However, in such type of cases, there should be some deterrent effect so that the workman may not be tempted to repeat such misconduct in future. Looking to the facts and circumstances of the case, therefore, the order of penalty passed by the Labour Court is required to be interfered with and the Labour Court's order regarding withholding of three increments with future effect is substituted by directing withholding of five increments with future effect. Mr.Jhaveri for the petitioner - Corporation submitted that the aforesaid penalty may be appropriate looking to the facts and circumstances of the case.

#. The Award of the Labour Court is accordingly required to be modified to the aforesaid extent and now, the respondent - workman will be reinstated in service subject to the penalty of withholding of five increments with future effect. The Corporation is directed to give salary to the respondent - workman w.e.f. 1.11.1999 till actual reinstatement in service. The petitioner is also directed to reinstate the respondent workman at the earliest preferably within a period of two weeks from today.

#. The petition is accordingly partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)